

**ORIGINAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )

Implementation of Section 9 of )  
the Communications Act )

MD Docket No. 94-19

Assessment and Collection of )  
Regulatory Fees for the 1994 )  
Fiscal Year )

DOCKET FILE (COPY ORIGINAL)

TO: The Commission

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**Response of the National Association  
of Broadcasters to Petition for  
Reconsideration and Clarification**

The National Association of Broadcasters ("NAB")<sup>1</sup> submits this response in support of the "Petition for Reconsideration and Clarification" submitted on July 24, 1995 by Lee Enterprises, Incorporated. Lee Enterprises asked the Commission to hold that all licensees of full-power television satellite stations be assessed regulatory fees for Fiscal Year 1994 under the same standard, regardless of whether a station sought reconsideration or protested its fee at the time it was paid.

In *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd. 5333 (1994), the Commission rejected the position of commenting parties (including NAB) that the level of 1994 regulatory fees to be paid by full power satellite stations be set substantially below the amounts to be paid by full service stations. The Commission concluded that Congress had left it no room to

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<sup>1</sup> NAB is a non-profit association of radio and television stations and broadcasting networks. NAB serves and represents the American broadcasting industry.

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set a different fee schedule for satellite stations. “The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. . . . Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations.” *Id.* at 5361. Although the Commission then afforded some relief for satellite stations facing particularly burdensome regulatory fees (such as situations where the satellite station’s fee exceeded the fee owed by the parent), the Commission’s explicitly stated view at the time regulatory fee payments were due was that most satellite stations were obliged to pay the same fees as full service stations

On reconsideration, long after the 1994 regulatory fees were paid, the Commission recognized that “because satellites are generally used to serve rural and sparsely populated areas and do not generally function as full service stations, there may be inequities in treating them as full service stations for fee purposes.” *Implementation of Section 9 of the Communications Act (Reconsideration)*, MD Docket No. 94-19 (rel. June 22, 1995) at 8. The Commission went on to provide that, “*for those stations that have timely filed petitions for reconsideration or for waiver or reduction of the regulatory fees for satellite stations, we will grant partial waivers and reduce the fees for licensees operating satellite stations so that each set of parent and satellite stations will pay a regulatory fee based on the total number of television households served. . . .*” *Id.* (emphasis added).

NAB applauds the Commission’s decision to address the inequitable treatment of satellite television stations under the FY 1994 regulatory fee program. The Commission’s decision to base fees on the combined audiences of both parents and satellites fairly reflects the fact that most

satellite stations serve only limited populations. Nonetheless, NAB is concerned that, by providing this revised method of calculating fees only to stations that sought reconsideration or filed waiver requests on or before the date the 1994 fees were paid, the Commission will unfairly penalize licensees — like Lee Enterprises — that accepted, perhaps reluctantly, the Commission's initial fee decision as its final word on the subject.

Before the 1994 regulatory fees were due, the Commission rejected broadcaster arguments that satellite stations should pay a reduced regulatory fee and held, with two limited exceptions, that such stations would be required to pay the same fees as full service stations. Nothing in the Commission's decision indicated that the Commission would entertain any further consideration of the issue. Further, both the Commission's decision and Commissioner Quello's separate statement indicated a view that the statute left the agency no room to consider different fee levels for satellite stations.<sup>2</sup> Thus, licensees of satellite stations had little reason to ask the Commission again to reduce their regulatory fees, since the Commission had indicated that those requests would likely fall upon deaf ears.

Now, having reconsidered its position, the Commission apparently intends to restrict the benefits of its decision only to those stations that asked for waivers or further reconsideration. That decision is unfair in that it results in higher fees for licensees of satellite stations that chose not to burden the Commission with further pleadings on an issue on which the Commission had made an apparently final decision. Since the Commission gave no notice to licensees that the

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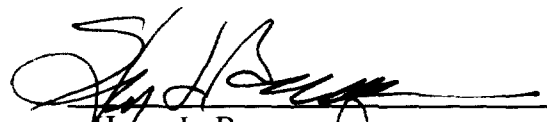
<sup>2</sup> Commissioner Quello wrote: "I am told that Congress has spoken, and that, as a legal matter, our hands are tied with respect to fees imposed for fiscal year 1994." *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd. at 5406 (Separate statement of Commissioner Quello)

benefits of any future fee decision would be so limited, it would be arbitrary to leave stations that did not file protests with a higher fee level than stations that did. Further, if the Commission declines to reconsider, the message that it will send licensees is that they should file protests and petitions for reconsideration, even in circumstances where the Commission has already fully considered their arguments, because they will not otherwise be entitled to the benefits of any change in the Commission's thinking. No public purpose would be served by encouraging the filing of perhaps thousands of repetitious petitions and protests.


Wherefore, the Commission should reconsider its decision and provide that its June 22, 1995 decision concerning the Fiscal Year 1994 regulatory fees for television satellite stations will apply to all such stations, regardless of whether they protested their fee at the time it was paid.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
BROADCASTERS  
1771 N Street, N.W.  
Washington, D.C. 20036  
(202) 429-5430



Henry L. Baumann



Jack N. Goodman

August 4, 1995

### **Certificate of Service**

I, Kimberly Washington, hereby certify that I have, this fourth day of August, 1995, caused to be sent by mail, first class postage prepaid, copies of the foregoing "Response of the National Association of Broadcasters to Petition for Reconsideration and Clarification" to:

Peter D. O'Connell, Esquire  
Kathleen A. Kirby, Esquire  
Reed Smith Shaw & McClay  
1301 K Street, N.W  
Suite 1100 - East Tower  
Washington, D.C 20005-3317

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Kimberly Washington